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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ELIZABETH BEAVER-JACKSON,
11 Plaintiff,
12 v.
13 OCWEN FED BANK, *et al.*,
14 Defendants.

CASE NO. C07-990RSM

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS AND
GRANTING DEFENDANTS'
REQUEST TO STRIKE PLAINTIFF'S
NOTICE OF LIS PENDENS

16 I. INTRODUCTION

17 This matter comes before the Court on defendants Roosevelt and Carolyn Hubbard's
18 ("defendants Hubbard") Motion to Dismiss (Dkt. #17). Defendant Windermere Realty
19 Estate/South, Inc. ("Windermere")¹ joins the Motion to Dismiss in its entirety. (Dkt. #24).
20 Defendants John Klein ("Klein"), Standard Trustee Service Company of Washington
21 ("Standard Trustee"), and STD Corp. ("STD") join a portion of the Motion to Dismiss.
22 (Dkts. #19 and #27). Defendants argue that plaintiff fails to state claims for which relief could
23 be granted pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 12(b)(6). Plaintiff
24 Elizabeth Beaver-Jackson ("plaintiff"), appearing pro se, did not respond to defendants'

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¹ Windermere Realty Estate/South, Inc. indicates it has erroneously been sued and identified as
27 Windermere Realty Company. (Dkt. #24 at 1). For purposes of this Order, the Court will hereinafter refer
to this defendant as "Windermere."

1 motion in accordance with the Court's rules. The Court, sensitive to plaintiff's pro se status,
 2 directed plaintiff to respond. Plaintiff subsequently submitted a declaration, reasserting facts
 3 and arguments made in her original and amended complaints, and also filed a notice of lis
 4 pendens. Defendants Hubbard request that the Court strike the notice of lis pendens.

5 For the reasons set forth below, the Court GRANTS defendants' motion to dismiss,
 6 and GRANTS defendants' request to strike plaintiff's notice of lis pendens.

7 **II. DISCUSSION**

8 **A. Background²**

9 On or around September 10, 1997, plaintiff alleges that she obtained a loan from Pan
 10 American Bank, FSB ("Pan American") in the amount of \$165,000 to purchase a home in
 11 Seattle, Washington. (Dkt. #39, Decl. of Jackson, ¶ 2); (Dkt. #21, Plaintiff's Amended
 12 Complaint ("PAC"), ¶ 4). Plaintiff further alleges that on or about June 12, 1998, she
 13 obtained a second loan from defendant STD in the amount of \$210,000 to pay off the loan
 14 with Pan American. (Dkt. #39, Decl. of Jackson, ¶ 4). Pursuant to the terms of this loan, a
 15 Deed of Trust was executed on plaintiff's home, naming herself as grantor, defendant STD as
 16 beneficiary, and defendant Standard Trustee as the trustee. (Dkt. #21, PAC, ¶ 7). Shortly
 17 thereafter, plaintiff indicates that a second Deed of Trust was executed on her home, naming
 18 herself as grantor, defendant Ocwen Loan Servicing, LLC ("Ocwen")³ as beneficiary, and
 19 defendant Wells Fargo Bank, N.A. ("Wells Fargo")⁴ as the trustee. (*Id.*). Plaintiff alleges that

21 ² The Court notes that the documents submitted by plaintiff (Dkts. #1, #21, #39, #43) are full of
 22 factual inconsistencies. Accordingly, the Court shall restate the facts based primarily on plaintiff's
 23 amended complaint (Dkt. #21), and supplements any inconsistencies in the light most favorable to plaintiff.

24 ³ Ocwen Loan Servicing, LLC indicates that it has erroneously been sued and identified by plaintiff
 25 as Ocwen Fed Bank, FSB aka AMRESCO Residential Mortgage Corporation. (Dkt. #26 at 2). For
 purposes of this Order, the Court will hereinafter refer to this defendant as "Ocwen."

26 ⁴ Wells Fargo, N.A., also indicates that it has erroneously been sued and identified by plaintiff as
 27 Wells Fargo aka Wells Fargo Bank Minnesota, N.A. (Dkt. #26 at 2). For purposes of this Order, the
 28 Court will hereinafter refer to this defendant as "Wells Fargo."

1 “[i]t appears that [defendant Wells Fargo] paid off defendant STD [] and held sole interest in
 2 [my] real property.” (*Id.*).

3 Nearly three years later, on May 21, 2001, defendant Wells Fargo declared that
 4 plaintiff was in default of her loan. (*Id.* at ¶ 9). Defendant Wells Fargo then brought an
 5 unlawful detainer action in King County Superior Court, seeking to evict plaintiff from her
 6 home. (*Id.* at ¶ 15). Defendant Wells Fargo argued that plaintiff had been in default of her
 7 loan since November 29, 1999, and had notified plaintiff of her default through a letter
 8 provided by defendant Klein, an attorney for defendant Wells Fargo. (*Id.* at ¶ 9); (Dkt. #39,
 9 Decl. of Jackson, ¶ 7, Ex. Q). Plaintiff contends that she never received such notice, and that
 10 the document from defendant Klein notifying plaintiff of her default was never brought to her
 11 attention until the commencement of the unlawful detainer action. (*Id.*). Nevertheless,
 12 judgment was entered in favor of defendant Wells Fargo in King County Superior Court.
 13 (Dkt. #21, PAC, ¶ 15). Following this proceeding, defendant Wells Fargo assumed ownership
 14 over plaintiff’s home, and subsequently resold the home to defendant Roosevelt Hubbard,
 15 who was an agent for defendant Windermere. (*Id.* at ¶¶ 10, 11); (Dkt. #24).

16 Based on these events, plaintiff brought the instant action in this Court, essentially
 17 arguing that all of the lenders and individuals involved in the series of events described above
 18 engaged in misconduct which ultimately resulted in plaintiff being wrongfully evicted from her
 19 home. Furthermore, plaintiff argues that any reasonable investigation performed by any of the
 20 defendants would have shown that plaintiff rightfully owned her home. As a result, plaintiff
 21 brings several claims against the defendants. Her amended complaint provides in pertinent
 22 part:

23 This action is for Declaratory and Injunctive Relief, Breach of Contract, Breach of
 24 Fiduciary Duty, Self Dealing of a Trustee, Civil Rights violation[s] pursuant to 42
 U.S.C. §§ 1981-1983, 1988, Breach of Covenant of Good Faith and Fair Dealing and
 Damages.

25 (Dkt. #21, PAC, ¶ 1).

26 Defendants Hubbard and defendant Windermere now move to dismiss all of plaintiff’s
 27 claims against them in their entirety with prejudice. Defendants Klein, Standard Trustee, and
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1 STD also seek dismissal of the Civil Rights claims asserted against them by plaintiff.

2 **B. Plaintiff's Supplemental Reply**

3 As an initial matter, the Court addresses a supplemental reply filed by plaintiff. (Dkt.
 4 #43). As noted above, plaintiff did not initially respond to defendants' motion to dismiss, and
 5 the Court permitted plaintiff to respond in accordance with this Court's rules given her pro se
 6 status. The Court also allowed defendants to submit an additional reply to plaintiff's
 7 response. Following a reply by defendants Hubbard, plaintiff filed an additional supplemental
 8 reply. This pleading, however, does not comply with this Court's rules. Pursuant to Local
 9 Rule GR 7(g), a surreply may only be filed when a party seeks to strike material contained in a
 10 reply brief. Furthermore, before a party files a surreply, it must: (1) notify all parties and the
 11 assigned judge's chambers as soon after receiving the reply brief as practicable that a surreply
 12 will be filed; (2) file the surreply within five judicial days of the filing of the reply brief; and (3)
 13 limit its reply to less than three pages. *See Local Rule GR 7(g)(1-3).* Here, plaintiff never
 14 obtained permission to file such a reply. Additionally, the docket clearly indicates that plaintiff
 15 filed her supplemental reply well after the five-day limit imposed by Local Rule GR 7(g)(2).
 16 Lastly, plaintiff's briefing, which is ten pages in length, exceeds the three-page limit
 17 established by Local Rule GR 7(g)(3). Accordingly, this pleading shall be stricken. The
 18 Court also notes that it has previously referred plaintiff to this Court's rules by its Order
 19 directing plaintiff to respond to defendants' motion to dismiss. (Dkt. #37). Therefore the
 20 Court finds it unwarranted to relax the rules once again.

21 **C. Standard of Review Under Fed. R. Civ. P. 12(b)(6)**

22 Under Fed. R. Civ. P. 12(b)(6), the Court must dismiss a complaint if a plaintiff can
 23 prove no set of facts in support of her claim which would entitle her to relief. *Van Buskirk v.*
24 Cable News Network, Inc., 284 F.3d 977, 980 (9th Cir. 2002); *Sprewell v. Golden State*
25 Warriors, 266 F.3d 979, 988 (9th Cir. 2001); *Love v. United States*, 915 F.2d 1242,1245 (9th
 26 Cir. 1989). In deciding a motion to dismiss, the Court accepts as true all material allegations
 27 in the complaint and construes them in the light most favorable to the plaintiff. *See Newman v.*
28 Sathyavaglswaran, 287 F.3d 786, 788 (9th Cir. 2002); *Associated Gen. Contractors v. Metro.*

1 *Water Dist.*, 159 F.3d 1178, 1181 (9th Cir. 1998). However, conclusory allegations of law
 2 and unwarranted inferences are insufficient to defeat a motion to dismiss. *Associated Gen.*
 3 *Contractors*, 159 F.3d at 1181. When a complaint is dismissed for failure to state a claim,
 4 “leave to amend should be granted unless the court determines that the allegation of other
 5 facts consistent with the challenged pleading could not possibly cure the deficiency.”
 6 *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

7 **D. Plaintiff's Civil Rights Claims**

8 In order to assert a civil rights claim, it is well established that a plaintiff must show
 9 that a defendant acted with an intent to discriminate. *See generally* 42 U.S.C. §§ 1981-1983,
 10 1988. Moreover, at the most fundamental level, a plaintiff must show some semblance of
 11 racially motivated behavior by the defendant. *See, e.g., Domino's Pizza, Inc. v. McDonald*,
 12 546 U.S. 470, 480, 126 S.Ct. 1246 (2006) (finding that a section 1981 plaintiff must identify
 13 injuries flowing from racially motivated conduct).

14 In this case, plaintiff does not allege a single fact that shows that any of the defendants
 15 acted with any discriminatory intent or racial animus based on plaintiff's race. In fact, the only
 16 time plaintiff even mentions race is to assert that she is a member of a protected class as an
 17 African-American, and that the defendants have “acted under the color of state statute, more
 18 commonly known as the Deed of Trust Act.” (Dkt. #21, PAC, ¶ 3).⁵ Such pleading is simply
 19 insufficient to survive a Rule 12(b)(6) motion. As a result, plaintiff's Civil Rights claims with
 20 respect to all of the defendants shall be dismissed with prejudice. **E. Plaintiff's**

21 **Remaining Claims**

22 Plaintiff also asserts a myriad of other claims against defendants Hubbard and
 23 defendant Windermere, including breach of contract, breach of fiduciary duty, self-dealing of a
 24 trustee, and the breach of the covenant of good faith and fair dealing. (Dkt. #21, PAC, ¶ 1).
 25 However, plaintiff simply fails to establish any facts that either defendants Hubbard or

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 27 ⁵ Notably, plaintiff does not offer any citation or explanation directing the Court how the “Deed of
 28 Trust Act” supports a Civil Rights claim.

1 defendant Windermere owed any fiduciary duty to plaintiff. Nor can plaintiff establish any
 2 inkling of a contractual relationship. Defendant Roosevelt Hubbard, as an agent for defendant
 3 Windermere, purchased plaintiff's former home at a foreclosure sale. Indeed, as defendants
 4 Hubbard correctly point out, the facts submitted by plaintiff establish that defendants Hubbard
 5 were bona-fide purchasers. For example, plaintiff's amended complaint provides:

6 On a date unknown to plaintiff at this time [defendant Wells Fargo] offered defendants
 7 [Windermere] and Hubbard that if they [purchased] plaintiff's property they would
 finance the loan to buy the property, [and convey] property right[s] to [defendants
 Hubbard], investor for [defendant Windermere].

8 (Dkt. #21, PAC, ¶ 11).

9 Moreover, any doubts regarding the foreclosure have already been resolved. As stated
 10 in plaintiff's own amended complaint, the dispute over the initial default was adjudicated in
 11 King County Superior Court in an unlawful detainer action brought by defendant Wells Fargo.
 12 Plaintiff indicates that "through some unknown court error [defendant Wells Fargo], though
 13 not present, received a judgment in their favor[.]" (Dkt. #21, PAC, ¶ 15). Plaintiff further
 14 contends that it "was proven that defendant Ocwen's accounting error had caused the
 15 premature foreclosure and that is all undisputed." (Dkt. #39, Decl. of Jackson, ¶ 9). Despite
 16 such claims, no support is offered for this statement, nor is the record of the unlawful detainer
 17 action provided to this Court.⁶ In addition, the misconduct which plaintiff alleges in this case
 18 pre-date defendants Hubbard and defendant Windermere's involvement with this case.
 19 Plaintiff's allegation that she was paying two mortgages at once prior to the foreclosure on
 20 her home does not establish any relationship, much less a contractual one, between plaintiff
 21 and defendants Hubbard and defendant Windermere.

22 While a plaintiff is certainly allowed to assert as many claims as she may have against
 23 an opposing party, *see Fed. R. Civ. P. 18(a)*, she must plead facts that give rise to those
 24 claims. Otherwise, such claims are merely conclusory in nature. Here, plaintiff does not
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26 ⁶ Plaintiff indicates that the record "is not included at this time as a prohibitive cost due to a lack of
 27 coordination of Superior Court Clerk's Office and the Ex Parte department of the Superior Court of
 Washington." (*Id.*).

1 allege any facts whatsoever to support any cognizable legal cause of action against defendants
 2 Hubbard or defendant Windermere. While leave to amend a complaint is generally granted,
 3 plaintiff has already amended her complaint once in this case, and the defects in her complaint
 4 cannot be cured. Therefore, under these circumstances, plaintiff's remaining claims against
 5 these defendants shall be dismissed with prejudice.

6 **F. Notice of Lis Pendens**

7 A lis pendens serves to alert subsequent purchasers or secured parties of a potential
 8 senior security interest in the title or ownership of real property pending a possible judgment
 9 against that real property. *Feiler v. U.S.*, 62 F.3d 315, 319 (9th Cir. 1995). “*There must be*
 10 *some basis* for concluding that an equitable lien or constructive trust would be imposed on the
 11 real property subject to the notice of lis pendens.” *Chevron U.S.A. Inc. v. Schirmer*, 11 F.3d
 12 1473, 1479 (9th Cir. 1993) (emphasis in original). A lis pendens is groundless where the
 13 underlying action affecting title to real property “has no arguable basis or is not supported by
 14 credible evidence.” *Id.* (citation omitted).

15 Here, and as previously discussed, defendants Hubbard have title over the at-issue
 16 property following a bona-fide purchase at a foreclosure sale. And by plaintiff's own
 17 submission, the foreclosure sale followed an unlawful detainer action in King County Superior
 18 Court which plaintiff lost. Therefore there is neither an arguable basis nor credible evidence
 19 for plaintiff's notice of lis pendens.

20 **III. CONCLUSION**

21 Having reviewed the relevant documents, and the remainder of the record, the Court
 22 hereby finds and orders:

23 (1) Defendants Roosevelt and Carolyn Hubbard's Motion to Dismiss (Dkt. #17), in
 24 which defendant Windermere Realty Estate/South, Inc. (Dkt. #24) joins in its entirety, and in
 25 which defendant John Klein (Dkt. #19), and defendants Standard Trustee Service Company of
 26 Washington and STD Corporation (Dkt. #27), join partially, is GRANTED. Specifically,
 27 plaintiff's claims with respect to defendants Roosevelt and Carolyn Hubbard, and defendant
 28 Windermere Realty Estate/South, Inc. shall be dismissed with prejudice. Plaintiff's Civil

1 Rights claims against defendants John Klein, Standard Trustee Service Company of
2 Washington, and STD Corporation shall also be dismissed with prejudice.

3 This Order does not dismiss the case as all other claims alleged by plaintiff against
4 defendants John Klein, Standard Trustee Service Company of Washington, and STD
5 Corporation and the remaining claims are pending before the Court. In addition, all of
6 plaintiff's claims against defendants Wells Fargo and Ocwen Loan Servicing, LLC, remain
7 pending before the Court.

8 (2) Defendants Roosevelt and Carolyn Hubbard's supplemental request to strike
9 plaintiff's Notice of Lis Pendens is GRANTED. The Clerk is directed to strike plaintiff's
10 notice (Dkt. #40) from the record.

11 (3) The Clerk is directed to forward a copy of this Order to all counsel of record and
12 to pro se plaintiff at 3331 E. Marion Street, Seattle, WA 98122.

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14 DATED this 1st day of February, 2008.

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17 RICARDO S. MARTINEZ
18 UNITED STATES DISTRICT JUDGE
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